IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

AS.No. 499 of 2002()

OS.1103/1994 of PRL.SUB COURT,IRINJALAKUDA

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APPELLANT/ADDL.6TH DEFENDANT:

SHAMSUDHEEN,S/O.PAMBINEZHATAH MOHAMMED,
PAPPINIVATTOM VILLAGE & DESOM,KODUNGALLUR TALUK.

BY ADV. SRI.SATHISH NINAN
SRI.MANOJ SUBRAMANIAN
SRI.K.S.BHARATHAN

RESPONDENTS/PLAINTIFFS AND DEFENDANTS 1 TO 5:

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1. RAMU @ RAMAN,S/O.ADIPARAMPIL KUNJANDI,
PAPPINIVATTOM VILLAGE,KODUNGALLUR TALUK,RESIDING
AT CHINNAKOVIL VEETHIYIL C-8,VEDAVATTI ROAD,
COIMBATORE.

2. CHANDRASEKHARAN,S/O.ADIPARAMBIL RAMU,
OONACHAMAVU DESOM,PAPPINIVATTOM VILLAGE,
KODUNGALLUR TALUK.

3. SIVADASA BABU,S/O. -DO- -DO-

4. SUMATHI,SISTER OF 1ST & 2ND DEFENDANTS,
PANANGAD DESOM,KODUNGALLUR TALUK.

5. SHOBHANA,OONACHAMAVU DESOM,PAPPINIVATTOM
VILLAGE,KODUNGALLUR TALUK.

6. SIVASANKARAN,S/O.PARAPARAMBIL SANKARAN,
POOVATHUMKADAVU DESOM,PAPPINIVATTOM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.P.M.MOHAMMED SHIRAZ

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 04/10/2007,
ALONG WITH AS NO. 576 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.Nos.499 of 2002
&
576 of 2002

Dated, this the 4th day of October, 2007

JUDGMENT

A.S.No.499/2002 is filed by the additional sixth defendant in O.S.No.1103/1994. A.S.No.576/2002 is filed by defendants 1 to 4 in the above said suit.

2. The short facts necessary for the disposal of the appeals are as follows: The plaintiff filed the suit for recovery of three items of properties. It was averred that the plaintiff purchased the properties under three sale deeds. Defendants 1 to 4 are the children of the plaintiff. Most of the time he was working in Tamil Nadu and finally settled at Coimbatore. He was not able to read and write Malayalam. During January, 1992 defendants 1 to 4 obtained the signature of the plaintiff in some blank papers exerting coercion. Thereafter defendants 1 to 4 were taking income from the property and collecting rent. Plaintiff questioned the acts of defendants 1 to 4 and defendants had agreed to pay him Rs.40,000/- and paid an amount of Rs.10,000/-. But the balance was not paid. Defendants 1 and 2 had filed a suit against the plaintiff and that suit was pending. Plaintiff had filed written statement in that suit stating the true facts. Defendants 1 and 2 had sold a portion of the suit properties to 5th defendant and hence he was also made a party to the suit. On 16.1.1992 defendants 1 and 2

forcibly obtained the signature of the plaintiff in certain blank papers and any documents created by the defendants using those papers were not enforcible. Even if those agreements are found to be genuine defendants 1 to 4 had violated the terms of the agreement and sold a portion of the properties to 5th defendant and as such the plaintiff was entitled to recover the same. Defendants 1 to 4 were not entitled to get the alleged agreement for sale specifically enforced. Hence the suit for recovery on the strength of title.

3. Defendants 1 to 4 had filed a joint written statement contending that the suit was not maintainable. The relationship was admitted. It was contended that the plaintiff deserted his wife and children about 36 years ago and went to Coimbatore and was residing there with another lady. It was contended that one Chennara Sasidharan was residing in the suit property and plaintiff was having no title or possession. The averment that the plaintiff was not able to read and write was denied. The averment that defendants obtained signature of the plaintiff in certain blank papers under duress was denied. It was further contended that defendants 1 to 4 did not exert any threat or duress on the plaintiff. It was also contended that defendants 1 to 4 did not sell any portion of the suit properties. It was further contended that on 16.1.1992 an agreement was entered into between the plaintiff and defendants 1 to 4 and an amount of Rs.10,000/- was paid by the defendants to the plaintiff. It was also contended that plaintiff had agreed to execute a sale deed in favour of defendants. But he was evading the same and

thereby committed breach of agreement. It was contended that defendants had filed a suit for an order of permanent prohibitory injunction against the plaintiff and during the pendency of that suit O.S.No.1104/1994 was filed. Suit filed by the defendants in the year 1992 was compromised. It was contended that the suit is barred by res judicata. It was also specifically contended that the plaintiff himself had executed a power of attorney in favour of 5th defendant. On the strength of that power of attorney 5th defendant sold the property to one Shamsudhin as per sale deed No.774/1993. It was further contended that suppressing all those facts the present suit was filed and plaintiff has no locus standi to maintain such a suit. It was contended that defendants 1 to 4 came to know about the pendency of the suit only on receipt of the notice in E.P.No.379/1997 filed in the other suit. It was also contended that the person who purchased the property on the strength of power of attorney executed by the plaintiff would contest the suit and defendants had no objection in it. It was again reiterated that the plaintiff himself had executed a power of attorney in favour of 5th defendant and on the strength of it 5th defendant had sold the property. It was also contended that the plaintiff executed a power of attorney No.50/1993 in favour of 5th defendant and the property was put in the possession of 5th defendant and on the strength of that power of attorney on 11.3.1993 the 5th defendant had executed document No.774/1993 in favour of additional 6th defendant. It was further contended that 6th defendant had sold the property on 24.1.1994 as per sale deed No.290/1994 to Chennara Sasidharan and

Sasidharan was in possession and enjoyment of the same and he had effected improvements also. So defendants 1 to 4 prayed for dismissal of the suit.

4. 5th defendant did not appear and contest the case. 6th defendant filed separate written statement contending that the suit is not maintainable and it was bad for non-joinder of necessary parties. It was contended that 19¼ cents comprised in Sy.No242/1 was in the possession of one Prakashan who is a member of Scheduled Caste and that fact was known to defendants 1 to 4 and plaintiffs and without impleading him no effective relief can be granted. It was also contended that the suit was filed by the plaintiff in collusion with defendants 1 to 4 to cause hardships to other defendants. It was further contended that the plaintiff was not residing in the suit properties for more than 40 years and he was not having any title over the properties. It was also contended that defendants 1 to 4 had entered into an agreement for sale with the 5th defendant on 8.8.1991 in respect of 19¼ cents. It was contended that subsequently the plaintiff himself executed a registered power of attorney in favour of the wife of the 5th defendant and on the strength of that power of attorney a sale deed was executed in favour of 6th respondent and the 6th respondent in turn sold the property to one Prakashan in the year 1994 and the alienee had put up a building, value of which will be more than Rupees five lakhs. It was also contended that the property scheduled in the plaint and the property sold by the 5th defendant, the power of attorney holder to the 6th defendant were different. It was specifically contended that no property as

described in the suit were available. It was again reiterated that the property was sold on the strength of power of attorney executed by the plaintiff. The averment that the plaintiff was unable to read and write Malayalam was denied. He also prayed for dismissal of the suit.

5. The plaint was amended as per order dated 29.11.1994 passed in I.A.No.4074/1994. The suit was decreed exparte on 31.7.1997. Defendants 1 to 4 had filed a petition under Order IX Rule 13 of CPC to set aside the exparte decree. That application was dismissed. Challenging that order defendants 1 to 4 had filed C.M.A.No.155/1999 before this Court. This Court by judgment dated 25.1.2002 allowed the C.M.A. on condition and set aside the exparte decree and the judgment passed by the trial court and remanded the matter. The case was posted for appearance of parties on 1.3.2002. After remand the plaintiff filed I.A.No.1745/2002 to implead the appellant in A.S.No.499/2002 as additional 6th defendant. I.A.No.1745/2002 was posted for hearing the objections of defendants 1 to 4. Prayer was opposed by defendants 1 to 4. Trial court allowed the application and impleaded the appellant in A.S.No.499/2002 as additional 6th defendant in the suit as per order dated 18.7.2002. I.A.No.1745/2002 was allowed without notice to the additional 6th defendant. Thereafter summons was issued to him. A reading of the records shows that plaintiff's evidence was recorded on 10.7.2002 and thereafter on 12.7.2002 he filed I.A.No.1745/2002. Additional 6th defendant appeared on 7.8.2002 and filed written statement on 9.8.2002. Case was

posted to 12.8.2002 and from 12.8.2002 to 13.8.2002. On 13.8.2002 it was recorded that D6 absent and the suit was posted to 26.8.2002. On 26.8.2002 the suit was disposed of. Challenging the judgment and decree passed by the trial court the above appeals are filed.

6. The learned counsel appearing for the appellant in A.S.No.499/2002 has argued that no opportunity was given to the appellant to adduce evidence. It is argued that the plaintiff claimed title under three sale deeds and those three sale deeds were not produced and on that simple ground alone the trial court ought to have dismissed the suit. It is argued that the appellant in A.S.No.499/2002 was not a party to Ext.A2 compromise entered into between defendants 1 to 4 and plaintiff and any admission made by defendants 1 to 4 will not bind on additional 6th defendant.

7. As I have already stated, in the original plaint there were three items. In the year 1994 item Nos.2 and 3 were deleted and relief was confined to 26 cents of land and a building alone. Defendants 1 to 4 in their original written statements itself had averred that one Chennara Sasindran was residing in that property. It was very specifically contended that the plaintiff himself had executed a registered power of attorney No.50/1993 in favour of the 5th defendant and the 5th defendant on the strength of that power of attorney sold the property to the additional 6th defendant on 11.3.1993 as per sale deed No.774/1993. It is true that the written statement was filed on 8.4.2002, after the judgment passed in

C.M.A.No.155/1999 setting aside the exparte decree. But the plaintiff did not take any steps to implead the additional 6th defendant in fact he was examined on 10.7.2002. Documents Exts.A1, A2, B1 and B2 marked. Case was posted to 15.7.2002 for defence evidence. Application to implead the additional 6th defendant was filed on 12.7.2002 and it was posted to 15.7.2002 and then to 16.7.2002. On 16.7.2002 it was heard and posted to 18.7.2002. On 18.7.2002 the appellant in A.S.No.499/2002 was impleaded. Within three days summons was issued to him and within two days he had compelled to file written statement and no further evidence was adduced. On the basis of the evidence already on record before impleading the additional 6th defendant/appellant in A.S.No.499/2002 the case was disposed of. It would appear that the learned Subordinate Judge had disposed of the matter with undue haste simply because this Court had issued a direction to dispose of the suit within six months from 1.3.2002. It is true that such a direction was issued. But after the judgment in C.M.A.No.155/1999 defendants 1 to 4 had filed written statement giving the details of power of attorney alleged to have been executed by the plaintiff in favour of the 5th defendant and the sale deed executed by the power of attorney in favour of the 6th defendant. If the appellant/additional 6th defendant was claiming under defendants 1 to 4 there was some justification in disposing of the suit with the evidence on record. But the defendants 1 to 4 as well as the appellant/6th defendant had contended that the 6th defendant obtained the property on the strength of the power

of attorney executed by the plaintiff himself. So the most crucial question to be considered in this case was whether the plaintiff had executed a power of attorney as alleged in the written statement filed by the appellants in both the appeals. The appellants should have been given a reasonable opportunity to prove their case. It is true that so far as defendants 1 to 4 are concerned they were bound by the terms of Ext.A2 compromise. But that alone was not sufficient to give a decree for recovery of the suit property. Court below did not even note the fact that the appellant in A.S.No.499/20002 had raised a contention that in view of the principles contained in Section 48 of the Registration Act the plaintiff was not entitled to get any relief. So I have no other option other than setting aside the decree and judgment passed by the trial court and remand the case for disposal. I do so. I make it clear that I am not expressing any opinion on the merits of the contentions raised by the appellants in these appeals and that is a matter to be considered by the trial court. It is open to the parties to raise all the contentions before the trial court and adduce evidence, if so advised.

In the result, both the appeals are allowed. The judgment and decree passed by the trial court in O.S.No.1103/1994 are hereby set aside. Suit is remanded to the trial court for fresh disposal in accordance with law after giving both sides an opportunity to adduce evidence. Being an old case the trial court shall make every endeavour to dispose of the case as expeditiously as possible, at any rate, within a period of six months from the date of appearance of parties

before the court below. Parties shall appear before the court below on 7.11.2007. Parties are directed to suffer their costs in both the appeals.

C.M.P.No.6153/2002 in A.S. No.499/2002 will stand dismissed.

C.M.P.No.7167/2002 and I.A.Nos.867/2003, 2561/2003 & 1109/2005 in A.S.No.576/2002 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

A.S.Nos.499 of 2002
&
576 of 2002

JUDGMENT

4th October, 2007.